Office-Supreme Court, U.S.
FILED
AUG 23 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-442

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

FRANK J. CALVO,

PETITIONER,

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND REQUEST FOR SUMMARY REVERSAL

APPENDICES FOR PETITIONER

at Clerk's request,

ALTERNATE ADDITIONAL APPENDICES

FRANK J. CALVO
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Pro Se for Petitioner

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Pursuant to instructions of the Clerk of the Supreme Court of the United States, these Appendices are submitted as alternate and additional Appendices to conform in size to the printed Petition for Writ of Certiorari. Its content is less than the large xeroxed appendices. Please make use of the xeroxed appendices which are under one separate cover.

The Clerk gave permission to xerox the Magistrate's Report & Recommendation As To Civil Rights Complaint, which accompanies these appendices under a seperate cover.

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ENTERED
JANUARY 28, 1981

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FRANK J. CALVO,
Plaintiff,

NO. CV 73-2095-RJK (G)

v.

SUMMARY JUDGEMENT

LOS ANGELES UNIFIED
SCHOOL DISTRICT,
Defendant.

IT IS ADJUDGED that the motion for summary judgment of defendants is granted.
DATED: January 19, 1981

ROBERT J. KELLEHER
United States District Judge

FILED
JANUARY 27, 1981

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FRANK J. CALVO,
Plaintiff,

NO. CV 73-2095-RJK (G)

v.

ORDER

LOS ANGELES UNIFIED
SCHOOL DISTRICT,
Defendant.

Pursuant to 28 U.S., § 636 (b) (1) (B) and General Order No. 194, attached is the Report and Recommendation of the United States Magistrate who has reviewed the complaint filed herein and heard and considered defendant's motion for summary judgment.

The Court has reviewed the complaint, the file (including all documents related to the motion for summary judgment of defendant), and the attached Report and Recommendation of Magistrate Ralph J. Geffen, and plaintiff's objections thereto; the Court concurs with and adopts the Report and Recommendation as the opinion of the Court.

IT IS ORDERED that the motion for summary judgment of defendants is granted.

IT IS FURTHER ORDERED that the Clerk shall serve forthwith a copy of this order and the Magistrate's Report and Recommendation, and the Judgment herein, by United States mail, on the plaintiff and on the County Counsel, Los Angeles, California.

DATED: January 19, 1981

ROBERT J. KELLEHER
United States District Judge

CIVIL MINUTES — GENERAL

Case No. CV 73-2095-RJK Date: March 2, 1981
Entered
Mar. 23, 1981

Title: CALVO v. LOS ANGELES UNIFIED SCHOOL DISTRICT

Docket Entry: ENTERED MARCH 23, 1981

Present:
HON. ROBERT J. KELLEHER, JUDGE
James H. Haggard, Deputy Clerk

Attorneys Present for Plaintiffs: N/A
Attorneys Present for Defendants: N/A

A-3

Proceedings: MINUTE ORDER

Plaintiff having made a motion to vacate the Court's summary judgment granted in favor of defendants, the Court having taken the matter under submission, having considered the motion and the related papers on file and being fully informed, it is hereby ORDERED that plaintiff's motion is DENIED.

The Clerk shall send a copy of this Order to the parties.

Frank Calvo
4312 Saugus Ave.
Sherman Oaks, CA 91403

FILED
MAY 27, 1982

B-1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK J. CALVO,
Plaintiff-Appellant,

No. 81-5306

vs.

MEMORANDUM

LOS ANGELES UNIFIED SCHOOL DISTRICT; WILLIAM B. BROWN; PAT TURNER; W.K. FITT; FRANK FITTEN; WILLIAM B. SPAETER; A.J. SHUGG; ROBERT T. GREEN; FRANK KOSKI,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of California
The Honorable Robert Kelleher, Presiding
Argued and Submitted: March 1, 1982

Before: HUG, TANG AND PREGERSON, Circuit Judges.

Appellant Frank Calvo appeals from a summary judgment granted in favor of the Los Angeles Unified School District and various of its personnel officers. Calvo contends that on three separate occasions he became a probationary teacher with the school district, and that each time the school district subsequently demoted him to substitute teacher status without affording him the notice and hearing required before a probationary teacher can be dismissed. Cal. Educ. Code § 13443.[1]

The district court concluded that Calvo was never promoted from substitute to probationary teacher status. Hence, the school district never demoted Calvo and the school district's actions never triggered the procedural protections of section 13443. We affirm.

Calvo claims that the school district first demoted him from probationary to substitute status in 1964. The record indicates, however, that Calvo's contract for the previous years, and the school district's correspondence with him during this period, specified that he was not a probationary teacher. Those documents further noted that he could become one only if he passed the district's qualifying examination and was selected from the district's eligibility list.

Calvo concedes that he fulfilled neither requirement in 1964. His employment during that year was solely as a substitute, and the school district did not demote him from probationary to substitute status. The procedural protections of section 13443, therefore, were never called into play.

1966

Calvo also claims that he became a probationary teacher in 1966, and that he was subsequently demoted to substitute status without notice and a hearing. Once again, however, the evidence shows that Calvo never became a probationary teacher, and that his subsequent employment as a substitute was not a demotion.

Calvo argues that Cal Educ. Code § 13446 automatically made him a probationary teacher in 1966, whether or not the district recognized the change in status. Section 13446 changes the status of "temporary" employees to "probationary" employees if they have not been dismissed during the first three months of the school term. Calvo argues that section 13446 converted his status to probationary because he worked as a long-term substitute from September 1965 to February 1966.

Section 13446, however, did not apply to Calvo because he was a substitute and not a temporary teacher. The Education Code clearly distinguishes between these two classifications. See Cal Ed. Code § 13337. A temporary teacher may become a probationary teacher under section 13446, but no such provision is made for substitute teachers.

Again, Calvo never became a probationary teacher, and, therefore, was not demoted when he was hired as a substitute.

Calvo next argues that he became a probationary teacher by virtue of Cal. Educ. Code § 13336.5 because he taught as a long-term substitute during the school years 1971 - 72 and 1972 - 73. The statute's language, however, refutes this assertion.

Section 13336.5, effective October 1971 through July 1973, provided that a teacher substituting at least 75% of one school year in a class or classes that would have been taught by one person absent from service "shall be deemed to have been a probationary employee during the entire school year in which he so teaches . . . and shall be deemed to have served a complete school year as a probationary employee . . ." However, "[n]o such employee shall be entitled to the benefits of this section unless he has also met the requirements, if any, including selection for probationary status from the appropriate eligibility list, established as a result of competitive examination, by the governing . . ." Id. (emphasis added).

Although Calvo had passed the qualifying examination in 1971, he was never selected for probationary status from the school district's eligibility list. Thus, section 13336.5 did not make him a probationary teacher and, therefore, his employment the following years as a substitute teacher was not a demotion.

Since Calvo never became a probationary teacher, he can not complain that he was demoted without the proper procedural protection. The trial court, therefore, correctly found his claims meritless.

AFFIRMED.

FOOTNOTES

.1. Under the California law, appellant's status is governed by the statutes in effect at the time of his hiring. Balen v. Peralta Jr. College Dist., 11 Cal. 3d 821, 830, 114 Cal. Rptr. 589, 523 P.2d 629 (1974), quoted in Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist., 76 Cal. App. 3d 223, 228 n. 3, 142 Cal. Rptr. 749 (1977).

C

FILED
JULY 27, 1982

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK J. CALVO,
Plaintiff-Appellant,

No. 81-5306

vs.

ORDER

LOS ANGELES UNIFIED
SCHOOL DISTRICT, et al.,
Defendants-Appellees.

Before: HUG, TANG, and PREGERSON, Circuit Judges.

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the en ban suggestion and no judge of the court has requested a vote on it.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.